



**STATE OF MONTANA  
DEPARTMENT OF CORRECTIONS  
POLICY DIRECTIVE**

Policy No. DOC 3.4.1	Subject: <b>OFFENDER DISCIPLINARY SYSTEM</b>
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Section 4: Rules and Discipline	Effective Date: Jan. 4, 1996
Signature: /s/ Mike Batista, Director	Revised: 09/09/2016

## **I. POLICY**

The Department of Corrections maintains offender rules of conduct, sanctions, and procedures for dealing with violations which are defined in writing and communicated to all offenders and staff. Disciplinary procedures are intended to hold offenders accountable for misconduct while incarcerated, to be acted on promptly, and carried out with respect for due process.

## **II. APPLICABILITY**

All divisions, facilities, and programs Department-owned and contracted, as specified in the contract.

## **III. DEFINITIONS**

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility or program operation and management

## **IV. DEPARTMENT DIRECTIVES**

### **A. General Requirements**

1. Offender disciplinary procedures will incorporate American Correctional Association (ACA) standards in accordance with the provisions of this policy.
2. Administrators will ensure that penalties imposed on offenders are fair, reasonable, and consistent with the severity of the violation.
3. Confidential information will be restricted throughout the disciplinary process in accordance with *DOC Policy 1.5.5 Offender Records Management, Access, and Release*.
4. Commission of any rule violation that is also a violation of criminal law may result in referral of the case to the appropriate court or law enforcement agency for consideration for prosecution of the case.
5. Staff assistance will be provided when a charged offender is illiterate, does not understand English, or where the complexity of the issue makes it unlikely that the offender will be able to collect and present evidence. Staff assistance is assigned only to help offenders understand the charges against them, the disciplinary hearings process, the process for presenting their version of the charges, and the process to appeal.

**B. Rules of Conduct**

1. Facility procedures will provide that:
  - a. written offender conduct rules specify prohibited acts within the facility, the range of penalties that may be imposed for various degrees of violation, and disciplinary procedures governing offender rule violations;
  - b. rules, penalties, and disciplinary procedures are reviewed annually and updated if necessary;
  - c. offenders are provided written material that contains facility rules, penalties and disciplinary procedures, signed acknowledgement of written material (receipt), and any necessary interpretative assistance in accordance with *DOC Policy 4.1.2 Offender Reception and Orientation*; and
  - d. all correctional staff who work directly with offenders receive initial and refresher training on current offender conduct rules, rationale for rules, and available sanctions.
2. The general categories of offender behaviors prohibited in facilities are outlined in *DOC Policy 3.4.2 Prohibited Acts*.

**C. Resolution of Minor Infractions**

1. Procedures specify that written guidelines exist for resolving minor offender infractions including a written statement of the violation and a hearing decision within seven days, excluding weekends and holidays, and that offenders may waive their appearance at the hearing.

**D. Disciplinary Reports**

1. Procedures provide that when rule violations require a formal resolution, staff members must prepare a disciplinary report and forward it to the designated supervisor.
2. Disciplinary reports prepared by staff members include, but are not limited to, the following information:
  - a. specific rule(s) violated;
  - b. a formal statement of the charge;
  - c. any unusual offender behavior;
  - d. any staff witnesses;
  - e. any physical evidence and its disposition;
  - f. any immediate action taken, including the use of force; and
  - g. reporting staff member's signature, and report date and time.

**E. Pre-hearing Action**

1. Procedures specify that when an alleged rule violation is reported, an appropriate investigation will begin within 24 hours of the time the violation is reported and is completed without reasonable delay, unless there are exceptional circumstances for delaying the investigation.
2. Procedures for adult secure facilities include a provision for pre-hearing confinement of offenders who are charged with a rule violation, documentation of the reason for the confinement, and review of the pre-hearing status by the facility administrator, or

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designee, within 72 hours, including weekends and holidays.

3. Juvenile facilities will develop procedures for pre-hearing confinement in accordance with *DOC Policy 3.5.1 Locked Housing Unit Operations*.
4. Pre-hearing confinement will not be punitive and used only when necessary to ensure the offender's safety or facility security; no offender will remain in pre-hearing confinement longer than necessary.
5. Procedures provide that an offender charged with a rule violation:
  - a. receives a written statement of the charge(s) including the incident description and specific rules violated;
  - b. is given the statement when the disciplinary report is filed but no less than 24 hours prior to the hearing; and
  - c. may have a hearing within 24 hours with the offender's written consent.
6. Procedures provide that the offender may waive the right to a hearing provided that the waiver is documented and reviewed by the appropriate staff member, or designee.

#### **F. Disciplinary Hearing – Scheduling**

1. Procedures provide that offenders charged with rule violations are scheduled for hearings as soon as practicable but no later than seven days, excluding weekends and holidays, after the alleged violation. Offenders are notified of the time and place at least 24 hours in advance of the hearing.
2. Written procedures provide for disciplinary hearing postponement or continuance for a reasonable period and good cause, e.g., defense preparation, investigation of related factual matters, offender illness or unacceptable behavior during the hearing process. Reasons for all delays will be documented.

#### **G. Conduct of Hearing**

1. Procedures provide that rule violation disciplinary hearings are conducted by an impartial person or panel of persons. Proceeding records are made and maintained for at least six months.
2. Procedures provide that offenders charged with rule violations are present at their hearings unless they waive that right in writing or through their behavior. Offenders may be excluded during the testimony of any offender whose testimony must be given in confidence; the reasons for the offender's absence or exclusion will be documented.
3. Procedures provide that offenders have an opportunity to make a statement and present documentary evidence at the hearing and may request witnesses on their behalf; the reasons for denying such a request are stated in writing.
4. Procedures provide that a staff member or agency representative may assist offenders at disciplinary hearings if requested. A representative is appointed when it is apparent that an offender is not capable of collecting and presenting evidence effectively on his or her own behalf.

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#### **H. Hearing Decisions – Basis for Decision**

1. Written procedures provide that the disciplinary decision is based solely on information obtained in the hearing process, including staff reports, the statements of the offender charged, and evidence derived from witnesses and documents.

#### **I. Hearing Record**

1. Procedures provide that a written record is made of the decision and the supporting reasons, and that a copy is given to the offender. The hearing record and supporting documents are kept in the offender's file and in the disciplinary hearing records.
2. Written procedures provide that if an offender is found not guilty of an alleged rule violation, the disciplinary report is removed from the offender's file, if reasonably possible. Otherwise, the file must clearly indicate that the offender was found not guilty of the alleged infraction.

#### **J. Administrative Review**

1. Written procedures provide for review of all disciplinary hearings and dispositions by the facility administrator, or designee, to assure conformity with policy and standards.

#### **K. Appeal**

1. Procedures grant offenders the right to appeal disciplinary decisions to the facility administrator, or designee. Offenders have up to 15 days of receipt of the decision to submit an appeal. The appeal is decided within 30 days of its receipt, and the offender is promptly notified in writing of the results.
2. The appeal process will consider at least three factors:
  - a. whether there was substantial compliance with Department policy and facility procedures in handling offender discipline;
  - b. whether the disciplinary decision was based on evidence; and
  - c. whether, under the circumstances, the sanction imposed was appropriate to the rule violation.

#### **V. CLOSING**

Questions concerning this policy should be directed to the facility administrator.

#### **VI. REFERENCES**

- A. 4-4226 through 4-4248; *ACA Standards for Adult Correctional Facilities, 4<sup>th</sup> Edition*
- B. *DOC Policies 1.5.5 Offender Records Management, Access, and Release; 3.4.2 Prohibited Acts; and 4.1.2 Offender Reception and Orientation*

#### **VII. ATTACHMENTS**

None